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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

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9 United States of America,

10 Plaintiff,

11 v.

12 Martel Alvarez Chavez,

13 Defendant.

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) 92-CR-0113-PHX-RGS

) 96-CIV-2841-PHX-RGS

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ORDER

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16 On March 18, 1992, Martel Alvarez-Chavez ("Chavez") was indicted on one count of

17 conspiracy to possess with intent to distribute cocaine. (Doc. # 3). Chavez was tried and

18 convicted, and on March 8, 1993, he was sentenced to a term of life imprisonment in the

19 custody of the Bureau of Prisons. (Doc. # 149). Chavez appealed, and the Ninth Circuit Court

20 of Appeals affirmed his conviction. (Doc. # 179).

21 On December 27, 1996, Chavez filed a motion to vacate, set aside, or correct sentence

22 pursuant to 28 U.S.C. § 2255. (Doc. # 210). The Court denied the motion on December 5,

23 2001. (Doc. # 279). Chavez filed an appeal (Doc. # 282), and on July 2, 2003, the Court

24 received the mandate from the Ninth Circuit Court of Appeals affirming the decision of the

25 Court. (Doc. # 285).

26 On August 1, 2003, Chavez filed a "Motion to Dismiss Indictment Due to Vindictive

27 Prosecution Doctrine Due Process Violation Federal Rules of Criminal Procedure Rule 12"

28 (Doc. # 287), which the Court construed as a motion to vacate, set aside, or correct sentence

pursuant to 28 U.S.C. § 2255. Since Chavez previously filed, and the Court previously decided,

1 a motion filed pursuant § 2255, the Court concluded that Chavez's vindictive prosecution
 2 argument was cognizable only as a successive § 2255 motion – governed by the Antiterrorism
 3 and Effective Death Penalty Act of 1996 ("AEDPA"). Accordingly, the Court denied the
 4 motion without prejudice to allow Chavez to seek leave of the Ninth Circuit Court of Appeals
 5 to file a second or successive § 2255 motion. (Doc. # 289).

6 Now pending before the Court are Chavez's: (1) motion for leave to amend original §
 7 2255 motion (Doc. # 292); (2) motion for leave to file supplemental pleadings in support of §
 8 2255 motion (Doc. # 293); (3) motion for leave to amend § 2255 motions (Doc. # 294); and (4)
 9 motion to compel the probation office to append the District Court's findings (Doc. # 295).

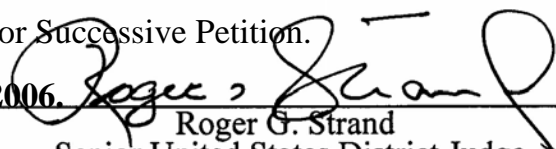
10 As this Court has previously stated in this matter, pursuant to the AEDPA, a district court
 11 may not consider a second or successive § 2255 motion without authorization from the court
 12 of appeals.¹ See 28 U.S.C. §§ 2244(b)(3)(A), 2255. Accordingly, Chavez's motions will be
 13 denied without prejudice to allow Chavez to seek leave of the Ninth Circuit Court of Appeals
 14 to file a second or successive § 2255 motion.

15 Based on the foregoing,

16 **IT IS ORDERED** denying motion for leave to amend original § 2255 motion (Doc. #
 17 292); motion for leave to file supplemental pleadings in support of § 2255 motion (Doc. # 293);
 18 motion for leave to amend § 2255 motions (Doc. # 294); and motion to compel the probation
 19 office to append the District Court's findings (Doc. # 295);

20 **IT IS FURTHER ORDERED** requiring the Clerk of Court to send Chavez an
 21 Application for Leave to File Second or Successive Petition.

22 **DATED this 14th day of February, 2006.**


 Roger G. Strand
 Senior United States District Judge

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 25 ¹ The court of appeals may authorize the district court to consider a second or successive motion
 26 if the movant shows either (1) newly discovered evidence that would be sufficient to prove clearly and
 27 convincingly that no reasonable factfinder would have found the movant guilty of the offense; or (2)
 28 the claim relies on a previously unavailable "new rule" of law made retroactive by the Supreme Court.
See 28 U.S.C. § 2255.